



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 25, 1996

Mr. Kevin McCalla  
Director, Legal Division  
TNRCC  
P.O. Box 13087  
Austin, Texas 78711-3087

OR96-1765

Dear Mr. McCalla:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100830.

The Texas Natural Resource Conservation Commission ("TNRCC") received a request for information concerning revisions to certain regulations. You indicate that TNRCC has already made public much of the information regarding the revisions, but you contend some of the records at issue are protected from disclosure pursuant to sections 552.107(1) and 552.111 of the Government Code. You submitted to this office for review the documents you seek to withhold from disclosure. You also marked some of the documents as representative samples of the information at issue.

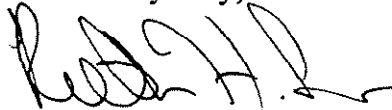
You state that some of the documents at issue were generated by the TNRCC legal staff and that these consist primarily of attorney advice and comment. Section 552.107(1) excepts from disclosure communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11. Section 552.107(1) does not except from disclosure the factual recounting of events or the documentation of calls made, meetings attended, and memos sent. Open Records Decision No. 574 (1990) at 5. We agree that most of the information for which you assert section 552.107(1) is excepted from disclosure. We have marked the samples you submitted as Exhibit B to show the type of information that may be withheld pursuant to section 552.107(1).

You also submitted other documents "written by technical staff" that pertain to the revisions. Many of these are draft documents. You assert that section 552.111 protects these records from disclosure. Section 552.111 excepts from disclosure inter-agency or intra-agency communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. *See Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ); Open Records Decision No. 615 (1993) at 5. Purely factual information is not excepted from disclosure under section 552.111. However, preliminary drafts of documents related to policymaking matters are generally excepted from disclosure since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final documents. *See* Open Records Decision No. 559 (1990). We agree that most of the information for which you assert section 552.111 is excepted from disclosure. We have marked sample documents to show the types of information that may be withheld from disclosure under section 552.111.

You may withhold from disclosure the types of information we have marked as being protected under sections 552.107(1) and 552.111. The remaining information at issue must be disclosed.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", written over a horizontal line.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID#100830

Enclosures: Marked documents

cc: Mr. Jep Hill  
816 Congress Avenue  
Suite 100  
Austin, Texas 78701-2443  
(w/o enclosures)